

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Chief of Police : Request Received June 18, 2012  
and Civil Service Status :  
: Advisory Opinion No. 29

**ADVISORY OPINION**

**I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED**

By letter received from the Office of the City Solicitor dated June 7, 2012, the Chief of Police of the City of Reading William Heim (“Chief of Police”)<sup>1</sup> requests this advisory opinion from the Charter Board of the City of Reading (“Board”). Generally, the Chief of Police wishes to “obtain the same Civil Service status that the rest of the police department enjoys.” The Chief of Police specifically asks 1) whether § 603(b) of the Charter of the City of Reading (“Charter”) prohibits him from receiving Civil Service status and 2) if he were granted such status, whether the Mayor of the City of Reading retains the power granted by § 603(b) to remove the Chief of Police without cause and/or a hearing.

For the following reasons, the Board is of the opinion that the Chief of Police is not entitled to Civil Service status, or the protections of such status, while serving as the Chief.

**II. DISCUSSION**

**A. Pertinent Charter Provisions**

There is no question that the Chief of Police is a City position governed by the Charter, as the Chief serves as the head of a City department, office or agency. Charter Section 603 provides for both the power of appointment of the heads of departments, offices or agencies by the Mayor, and for the power of removal. Charter Section 603 provides in pertinent part:

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<sup>1</sup> It is important to note that this advisory opinion, although requested by Chief Heim, is applicable to all future Chiefs of Police under the current Charter and state of the law.

**Section 603. Heads of Departments, Offices, and Agencies.**

(a) Appointment. Except as otherwise provided by this Charter, the Mayor shall appoint and remove the head of any department, office and agency. . . . The appointee shall serve unless rejected by City Councilor until removal from office, whichever is sooner.

(b) Removal. The Mayor shall have the power at any time to remove the head of any department, office or agency immediately under the Managing Director's direction and supervision. . . .

Section 702 of the Charter is also applicable, in that it creates both an exempt service, generally for elected and appointed officials and employees, and a non-exempt service, for all other employees. The relevant portions of Charter Section 702 provide:

**Section 702. Personnel System and Personnel Code.**

Each elected official, officer, and employee of the City shall be a member of either the career or exempt service.

(a) The exempt service shall consist of:

\* \* \*

(iii) The heads of departments, offices, and agencies immediately under the direction and supervision of the Managing Director;

\* \* \*

(b) All other officers and employees shall be members of the career service.

Finally, Charter Section 705 is applicable to the Board's analysis and provides as follows:

**Section 705. Compensation of Heads of Departments, Offices and Agencies.**

The compensation of all heads of departments, offices and agencies under the direction of the Mayor shall be proposed by the Mayor and approved by ordinance. Compensation of all other employees shall be set in accordance with the uniform pay plan

established by City Council in the Personnel Code. All such heads of departments, offices and agencies need not be residents of the City at the time of appointment, but after appointment shall reside in the City. City residency shall be required within twelve (12) months of being appointed.

These three sections of the Charter lead the Board to the inescapable conclusion that the Chief of Police cannot be entitled to Civil Service status while serving as the Chief.

**B. Analysis**

The advisory opinion request of the Chief of Police states that “[o]ne benefit of having [Civil Service] status would be that Chief Heim could not be terminated without cause and a hearing as per Civil Service regulations.” The Charter is specifically designed to allow the Mayor flexibility in the appointment and removal of the heads of departments, offices and agencies. The Chief of Police is such a head, and a conversion to Civil Service status during the term of service as Chief would cripple the Mayor’s Charter mandated powers of appointment and removal, if not totally impede them.

Sections 603 and 705 of the Charter respectively mandate the method of appointment and removal of the heads of departments, office and agencies, including the Chief of Police, and the determination of compensation for such positions. Converting the Chief of Police to only a Civil Service method of removal and compensation is totally contrary to the Charter.

Finally, Charter Section 702 defines the exempt and the non-exempt service. The Charter places the Chief of Police, by definition, in the exempt category. *See* Charter § 702(a)(3) and (b). The position of Chief of Police is a political appointment, subject to the qualification and approval provisions of the Charter. Civil Service status is incompatible with a position specifically defined as part of the exempt service and subject to termination by the Mayor “at any time.” *See* Charter § 603(b). *See also generally* PA Const. Art. VI, § 7 (“Appointed civil

officers . . . may be removed at the pleasure of the power by which they shall have been appointed.”)

C. **Further Discussion**

As a matter of Charter interpretation and guidance, the Chief of Police cannot have Civil Service status while serving as Chief of Police. To allow such status would be to ‘end run’ around the Charter, and possibly other laws,<sup>2</sup> granting the benefits reserved for rank and file police officers, who rise on merit and time served, to a political appointee. Further, Mayoral powers and the performance of the Chief of Police would be mired in a whole host of issues, including pay, pensions, residency, vacation, discipline, and removal. The Charter does not contemplate such an outcome.

III. **OPINION OF THE BOARD**

It is the Opinion of the Board that the Chief of Police, while serving as Chief, cannot be entitled to Civil Service status and that such status is incompatible with that office.

CITY OF READING CHARTER BOARD

By: *Susan J. Gibson*  
Susan Gibson, Chair

Date: July 17, 2012

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<sup>2</sup> The Board determined that, pursuant to the Charter, the Chief of Police cannot have Civil Service status. The Board does not comment on the applicability of other law, or on the determinations of other bodies, such as the Police Civil Service Board, other than to note that it is the Charter that is the superseding and controlling law in this case.